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No. 97-472

**In the**
**Supreme Court of the United States**
**October Term, 1997**

Bill Jones, Secretary of State of California,
*Petitioner*,
v.
Tom Bates, et al.,
*Respondents*.

**On Petition for a Writ of Certiorari or Writs of Prohibition and Mandamus to the Ninth Circuit Court of Appeals**

# BRIEF OF PETER F. SCHABARUM AND LEWIS K. UHLER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OR WRITS OF PROHIBITION AND MANDAMUS

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## QUESTIONS PRESENTED

1. Under our federal system, are states free to reform their governments by limiting the number of terms an elected official may hold office?

2. May a federal Circuit Court of Appeals exercise appellate jurisdiction over the judgment of a state court of last resort?

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Peter F. Schabarum and Lewis K. Uhler, nominally respondents pursuant to this Court's Rule 12.6, submit this brief in support of the Petition for a Writ of Certiorari or Writs of Prohibition and Mandamus, filed by California Secretary of State Bill Jones. Schabarum and Uhler, the official proponents of the California Term Limits initiative under attack in this case, were granted intervention as defendants pursuant to Federal Rule of Civil Procedure 24(a). Along with petitioner Jones, they participated as full parties defending the constitutionality of the initiative in both the District Court and the Court of Appeals.

Although this case concerns the constitutionality of a provision of the California Constitution, the impact of this case goes far beyond the boundaries of California, implicating the validity of the thousands of term limit laws applicable to state officers, state legislators, and local officeholders nationwide.

Moreover, the Ninth Circuit's invitation to plaintiffs to round up legislators and voters--including parties to the previous California Supreme Court litigation upholding the constitutional validity of Proposition 140--has now resulted in applications for intervention by 20 legislators and 24 voters arguing the unconstitutionality of term limits, and 1 legislator and a term limits organization seeking to defend term limits. The Ninth Circuit's apparent intention to permit the addition of these 46 parties to the lawsuit after oral argument on appeal is beyond the lower court's jurisdiction.

For the reasons set forth below, the petition for writ of certiorari should be granted.

## STATEMENT OF THE CASE

Against the backdrop of an entrenched politician class and attendant political corruption, the people of California

approved Proposition 140 on November 6, 1990, amending the California Constitution. The initiative implements structural reforms to state government, particularly the state Legislature, mandating a cut in the Legislature's budget, terminating the legislative pension plan, and imposing term limits. It limits the terms of members of the Assembly to three two-year terms and members of the Senate to two four-year terms. Cal. Const. Art. IV, § 2.[1]

These reforms were not enacted in a vacuum. For the two decades prior to the passage of Proposition 140, incumbency had acted as a virtual guarantor for reelection:

| Election Years | % of Assembly Incumbents Reelected | % of Senate Incumbents Reelected |
|---|---|---|
| 1972 | 94.1 | 100.0 |
| 1974 | 91.6 | 84.2 |
| 1976 | 90.6 | 81.8 |
| 1978 | 87.5 | 78.7 |
| 1980 | 89.7 | 94.1 |
| 1982 | 93.2 | 80.0 |
| 1984 | 98.7 | 94.4 |
| 1986 | 100.0 | 100.0 |
| 1988 | 94.8 | 100.0 |
| 1990 | 93.1 | 94.4 |
| 1992 | 96.2 | 100.0 |
| 1994 | 88.0 | 87.5 |

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[1] Statewide officers similarly are limited to two four-year terms, Art. V, § 2 (governor), § 11 (other statewide offices), as are members of the State Board of Equalization, Art. XIII, § 17.

Clerk's Record (CR) 130 (Def. Exh. 69), Table 5. The state Legislature was also the scene of scandal. In the 1980s the Federal Bureau of Investigation had conducted a wide-ranging sting operation designed to net corrupt California state politicians. The sting operation, nicknamed "Shrimpscam" for the bogus special interest bill to finance a shrimp-processing plant that was the focus of vote-selling, revealed a corruption endemic in the state Legislature. Former Senator Alan Robbins, a 19-year veteran of the Legislature, resigned on November 19, 1991, after three years of investigations. In his letter of resignation, Robbins made the connection between his longtime service in a powerful position and his ultimate downfall:

> Over a period of years, as I drank the heady wine of power and influence, my priorities in office became distorted. Success and recognition were foremost; honesty and adherence to the law were not at the center of my focus. Like some others before me, I placed undue emphasis on raising funds, on achieving political status and on impressing my friends.

Associated Press, *Text of Robbins' Letter of Resignation from Senate*, L.A. Times, Nov. 20, 1991, at A23. The Shrimpscam scandal resulted in prison sentences for former Senators Joseph Montoya, Alan Robbins, and Paul Carpenter and former Assembly members Pat Nolan and Frank Hill. Reporter's Transcript (RT) at 3-403-04. In the wake of these scandals and in an attempt to end perpetual incumbency, the people of the State of California adopted Proposition 140.

Immediately after Proposition 140's passage, the Legislature and a group of legislators, voters, and others petitioned the California Supreme Court to strike down the reforms as unconstitutional. Exercising its original jurisdiction

over the writ proceeding, the California Supreme Court upheld term limits on legislators and state officers as fully constitutional under both the state and federal constitutions. *Legislature v. Eu*, 54 Cal. 3d 492 (1991), *cert. denied*, 503 U.S. 919 (1992). The court also upheld the budget reduction and the elimination of the pension plan (except to the extent it applied to legislators first elected before 1990 who continued to serve after 1990). This Court declined to review the California court's ruling. *Legislature v. Eu*, 503 U.S. 919.

Term limits thereafter became an integral part of California's political landscape. In 1994, David Roberti, the former President Pro Tempore of the Senate, was the first legislator to be termed out. RT at 2-362. Several others, anticipating the ends of their political careers in a particular house of the Legislature, voluntarily resigned from their seats either to run for a different office, to continue to serve the public in appointive office, to return to the private sector, or simply to retire. CR 130.

Notwithstanding the judgment of the California Supreme Court, Assemblyman Tom Bates and several of his supporters launched a second court challenge to the measure on July 20, 1995, by suing the Secretary of State, Bill Jones, and Alameda County Registrar Bradley Clark in the United States District Court for the Northern District of California. CR 1. The District Court subsequently granted leave to intervene to Peter F. Schabarum and Lewis K. Uhler, the official proponents of Proposition 140. CR 66. Bates and his supporters asserted two causes of action: first, the voters alleged that, under the First and Fourteenth Amendments to the United States Constitution, they have a right to vote for whomever they please, for as long as they please, and that this right is violated by the term limits in the California Constitution. Bates asserted the alleged corollary right to be a candidate in perpetuity. Second, both groups alleged that term limits violate the Equal

Protection Clause of the Fourteenth Amendment because it discriminates against termed-out incumbents and those voters who would choose to support such termed-out incumbents. CR 1.

Schabarum and Uhler, the initiative proponents, and Jones, moved to dismiss the case on the grounds of res judicata and on the merits of the case. CR 20, 31. The District Court denied those motions. CR 66. Jones later moved for summary judgment on res judicata grounds when it was discovered that Bates had financially supported the *Legislature v. Eu* litigation. CR 83. Bates filed a simultaneous motion to amend the complaint to add Assemblywomen Barbara Friedman and Martha Escutia and their supporters as plaintiffs and Conny McCormack, Los Angeles County Registrar, as a nominal defendant. CR 93. The District Court denied the motion for summary judgment and granted the motion to amend on May 3, 1996. CR 103. The District Court conducted a bench trial from October 15-24, 1997 (CR 127-131), and issued its Judgment striking down California's term limits on April 23, 1997. CR 139. The court modified its findings on May 8, 1997, to include some findings related to res judicata. CR 148.

The proceedings in the Ninth Circuit Court of Appeals from Bates' initial notice of appeal to the extraordinary order of September 2, 1997, inviting intervenors into the lawsuit are fully described by petitioner Jones and will not be repeated here.

## REASONS FOR GRANTING THE WRIT

### I

### THE VALIDITY OF TERM LIMITS UNDER THE FIRST AND FOURTEENTH AMENDMENTS WILL AFFECT TERM LIMIT PROVISIONS IN AT LEAST 40 STATES AND IN THOUSANDS OF LOCAL GOVERNMENTS

Without immediate action by this Court, California's 1998 elections for state legislators will be in complete disarray. The Ninth Circuit's invitation to incumbents to intervene after oral argument on appeal is unprecedented. Its obvious motive--to exercise appellate jurisdiction over the judgment of the California Supreme Court in *Legislature v. Eu*--is an abuse of federal judicial power that cannot be sanctioned. Only *this Court* has such jurisdiction. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 622-23 (1989); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923); 28 U.S.C. § 1257. The Ninth Circuit's determination to cut as wide as swath as possible when it strikes down California's term limits will have devastating effects, not only in California, but throughout the Ninth Circuit and the rest of the country. As shown below, *every state in the Ninth Circuit* has term limits on some or all of its state and local officials. A decision by the Ninth Circuit striking down California's term limits on First and Fourteenth Amendment grounds will undoubtedly be followed by incumbents filing lawsuits in every federal District Court in the Western United States. The only way orderly 1998 elections remain possible given the Ninth Circuit's action is for this Court of last resort to grant the petition for writ of certiorari before judgment.

Certiorari before judgment, while unusual, is justified in cases that present issues of national importance. *See, e.g., United States v. United Mine Workers of America*, 330 U.S. 258, 268 (1947) (unilateral termination of union agreement and illegal strike); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584 (1952) (seizure of steel companies); *New Haven Inclusion Cases*, 399 U.S. 392, 418 (1970) (railroad consolidation); *United States v. Nixon*, 418 U.S. 683, 690 (1974) (compelled production of presidential tapes); *Dames & Moore v. Regan*, 453 U.S. 654, 660 (1981) (attachment of Iranian assets after hostages taken); and *Mistretta v. United States*, 488 U.S. 361, 362 (1989) (lower federal courts in "disarray" applying sentencing guidelines). These cases share the same fundamental, nationwide importance as the case at bar. Just as this Court previously granted certiorari before judgment in a case which "touch[es] fundamentally upon the ma[nn]er in which our Republic is to be governed," *Dames & Moore*, 453 U.S. at 659, this case presents issues that will similarly impact the manner in which Americans in the vast majority of states are governed.

In California, the immediate impact of a Ninth Circuit ruling overturning term limits and ruling that parties to the *Legislature v. Eu* case are no longer bound by the state Supreme Court's judgment, will be to throw the entire 1998 election cylce into chaos. Declarations of candidacy are due in only four short months, and campaign organization is necessary before a declaration of candidacy.

The full impact of the Ninth Circuit's ruling, however, will extend far beyond the 30 million Californians directly impacted. Term limits are, quite simply, ubiquitous for state executive officers and legislatures. Every state in the Ninth Circuit has term limits on state officials. And with the sole exception of the District Court in this case, no state or local term limits laws have ever been invalidated under the First and

Fourteenth Amendments. In addition to California, states with term limits on state officials and legislators include Alabama, Alaska, Arizona, Arkansas (upheld in *U.S. Term Limits v. Hill*, 872 S.W.2d 349 (Ark. 1994)),[2] Colorado, Delaware, Florida, Georgia (upheld in *Maddox v. Fortson*, 226 Ga. 71, 172 S.E. 595, *cert. denied*, 397 U.S. 149 (1970)), Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine (upheld in *League of Women Voters v. Diamond*, 923 F. Supp. 266 (D. Me.), *aff'd per curiam*, 82 F.3d 546 (1st Cir. 1996); *League of Women Voters v. Secretary of State*, 683 A.2d 769 (Me. 1996)), Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada (upheld in *Nevada Judges Association v. Lau*, 112 Nev. 51, 910 P.2d 898 (Nev. 1996)), New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington,[3] West Virginia (upheld in *State ex rel. Maloney v. McCartney*, 223 S.E.2d 607 (W.Va. 1976), *appeal dismissed for want of substantial federal question sub nom. Moore v. McCartney*, 425 U.S. 946 (1976)), and Wyoming.[4]

First and Fourteenth Amendment challenges to term limits would be identical regardless of the level of the limited office. Thus, the Ninth Circuit's anticipated ruling striking

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[2] These term limits for state officers were not at issue in the action before this Court, *U.S. Term Limits v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842 (1995).

[3] Washington's term limits are under attack in an original writ proceeding in the Washington Supreme Court. *Gerberding v. Munro*, Washington Supreme Court Docket No. 65059-4.

[4] Identification of the particular state constitutional provisions and statutes providing for consecutive or permanent term limits is appended to this brief as Appendix A.

down term limits as a violation of the United States Constitution places in jeopardy even term limits on city council members and county supervisors across the country. From Florida to Alaska, from New York to California, over 58 million Americans live in localities with limits of various sorts, and more than 14,000 politicians serve in 2,791 term limited cities, counties, and towns. Fagre, *Microcosm of the Movement: Local Term Limits in the United States*, 4 Term Limits Outlook Series (U.S. Term Limits Foundation) 1 (1995) (numbers accurate as of July 17, 1995).

At least some local governments, including virtually all major cities, in every state in the Ninth Circuit have term limits. *Id.* at Appendix: City List, showing Alaska--12 cities with term limits, including Anchorage; Arizona--4 cities, including Phoenix; California--41 cities, including Los Angeles, San Francisco, and San Diego; Hawaii--the City of Honolulu; Idaho with a constitutional provision requiring term limits for all 199 incorporated cities and 53 counties; Montana--2 cities, including Billings; Nevada with a constitutional provision requiring limits in all 18 incorporated cities; Oregon--10 cities; and Washington--4 cities, including Spokane and Tacoma.

Local term limits have uniformly survived challenges based on the First and Fourteenth Amendments. *See, e.g., Miyazawa v. City of Cincinnati*, 825 F. Supp. 816, 822 (S.D. Ohio 1993), *aff'd*, 45 F.3d 126 (6th Cir. 1995) (city council); *Lowe v. Kansas City Board of Election Commissioners*, 752 F. Supp. 897 (W.D. Mo. 1990) (city council); *Roth v. Cuevas*, 82 N.Y.2d 791, 624 N.E.2d 689, 604 N.Y.S.2d 551 (NY), *aff'g and adopting opinion in* 158 Misc. 2d 238, 603 N.Y.S.2d 962 (N.Y. 1993) (New York City council); *Cawdrey v. Redondo Beach,* 15 Cal. App. 4th 1212 (Calif. 1993) (city council); and *Dutmer v. City of San Antonio*, 937 F. Supp. 587 (W.D. Tex. 1996) (city council).

Because the constitutional validity of term limits impacts the governing structure of literally thousands of state and local governments, this Court should grant Jones' petition for writ of certiorari to make a timely, final determination of this issue.

## II

## THE NINTH CIRCUIT'S INVITATION TO INTERVENE HAS BEEN ACCEPTED BY 46 INDIVIDUALS, INCLUDING PARTIES BOUND BY THE CALIFORNIA SUPREME COURT'S JUDGMENT IN *LEGISLATURE v. EU*

In response to the Ninth Circuit's unprecedented order requesting legislators and voters to intervene after oral argument on appeal (Order dated September 2, 1997), the plaintiffs rounded up 20 legislators and 24 voters. A national term limits organization and an incumbent legislator who supports term limits also seek to intervene. Three of the applicant-legislators (Bill Lockyer, Kenneth Maddy, and Diane Watson) were named petitioners in *Legislature v. Eu*. Under any rational interpretation of res judicata, these three individuals would be bound by the California Supreme Court's decision. Four other applicant-legislators financially supported *Legislature v. Eu*: Leroy Greene contributed $10,000; Henry Mello contributed $10,000; Teresa Hughes contributed $1,500; and Herschel Rosenthal contributed $10,000 with a notation on the check reading: "Our share of court costs to fight Prop. 140." Declaration of Ruth Fridhandler in Response to Subpoena Duces Tecum, Exh. A, appended to Secretary of State Bill Jones' Motion for Summary Judgment, CR 83. The fact of their substantial financial interest in the litigation, plus the fact that each of them benefited from the California court's ruling on the pension issue, should place them all in privity

with the named parties in *Legislature v. Eu*. Each of these legislators seeks a second bite at the apple, in violation of the doctrine of res judicata.

Only this Court has authority to review judgments of state courts of last resort. *ASARCO*, 490 U.S. at 622-23; *Feldman*, 460 U.S. at 476; *Rooker*, 263 U.S. at 415-16; 28 U.S.C. § 1257. This Court specifically declined to exercise its discretion to review the California court's judgment in *Legislature v. Eu*. 503 U.S. 919. Should the Ninth Circuit allow intervention of parties who are bound by the judgment in *Legislature v. Eu*, it will make a mockery of the limits on appellate jurisdiction and threaten to rend the fabric of our federal system of government. As the only court with the jurisdiction to resolve the conflict over California's term limits in time for orderly 1998 elections, this Court should grant the Petition for Writ of Certiorari.

## CONCLUSION

Using the necessarily blunt weapon of the citizen initiative, the people of California sought to regain their legislature from permanent incumbents and install a government of citizen-legislators. The California Supreme Court, when it upheld the constitutional validity of California's term limits, suggested that if the experiment does not work out to the people's satisfaction, they could always propose another initiative to reverse course. *Legislature v. Eu*, 54 Cal. 3d at 512. In seven years, during which time the membership of the entire California Assembly, and most of the membership of the California Senate has been termed-out, there has been no movement to amend the state constitution to eliminate term limits. The only movement to alter the scope of term limits has been by dethroned legislators and the federal courts below. The people, however, seem quite content with the changes term limits have wrought.

Rule 11 of the Supreme Court Rules contemplates early action by this Court in the circumstances presented by this case: the case is of such imperative public importance as to justify deviation from normal appellate practice and it requires immediate settlement in this Court. Only this Court can avoid the impending conflict and dueling federal and state court injunctions that are the certain consequence of the Ninth Circuit's actions. To stave off this potential constitutional crisis, this Court should grant the writ before judgment to resolve the extremely important issues presented.

DATED: September, 1997.

Respectfully submitted,

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# APPENDIX A

## State Provisions Limiting Terms or Ballot Access to Incumbents After a Set Period of Terms or Years in a Particular Office

**Alabama:** Alabama Constitution Article V, § 116 (1901 & Supp. 1993) (governor, lieutenant governor, attorney general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries cannot succeed himself or herself).

**Alaska:** Alaska Constitution Article III, § 5 (1993) (governor who served two consecutive terms may not run again until one term has intervened).

**Arizona:** Arizona Constitution Article V, § 1 (1910 & Supp. 1993) (governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction cannot serve more than two consecutive terms); Article IV, pt. 2, § 21 (no state senator nor any state representative shall serve more than four consecutive terms in one office).

**Arkansas:** Constitutional Amendment 73 (state senators limited to two terms; state house members limited to three terms). Term limits on state officials upheld in *U.S. Term Limits v. Hill*, 872 S.W.2d 349 (Ark. 1994).

**California:** California Constitution Article V, § 2 (1879 & Supp. 1994) (governor cannot serve more than two terms); Article V, § 11 (same for lieutenant governor, attorney general, controller, secretary of state, state treasurer); Article IV, § 2 (state senators may serve no more than two terms, assemblymembers may serve no more than three terms). Term limits upheld in *Legislature v. Eu*, 54 Cal. 3d 492 (1991), *cert. denied*, 503 U.S. 919 (1992); struck down in *Bates v. Jones*,

___ F. Supp. ____ (N.D. Cal. 1995), *appeal pending*, Docket Nos. 97-15864, 97-15914 (9th Cir.).

**Colorado:** Colorado Constitution Article IV, § 1 (1973 & Supp. 1993) (governor, lieutenant governor, secretary of state, state treasurer, and attorney general cannot serve more than two consecutive terms in the same office); Article V, § 3 (state senators cannot serve more than two consecutive terms; state representatives cannot serve more than four consecutive terms).

**Delaware:** Delaware Constitution Article III, § 5 (1897 & Supp. 1992) (governor may not serve third term).

**Florida:** Florida Constitution Article IV, § 5 (1968 & Supp. 1994) (no person who served as governor for more than six years in two consecutive terms shall be elected governor for the succeeding term);[5] Article VI, § 4(b) (state representative, state senator, lieutenant governor, and any officer in Florida cabinet may serve no more than eight consecutive years).

**Georgia:** Georgia Constitution Article V, § 1, ¶ 1 (1982 & Supp. 1993) (governor and lieutenant governor can serve no more than two consecutive terms). Term limits upheld in *Maddox v. Fortson*, 226 Ga. 71, 172 S.E.2d 595, *cert. denied*, 397 U.S. 149 (1970).

**Hawaii:** Hawaii Constitution Article V, §§ 1, 2 (1985 & Supp. 1993) (governor and lieutenant governor can serve no more than two consecutive terms).

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[5] The 1885 and 1938 Florida constitutions limited the governor to only one four-year term, although the governor could run again if one full term had intervened. Florida Constitution Article IV, § 5 (commentary) (1968 & Supp. 1994).

**Idaho:** Idaho Stat. 34-907(1)(c)(d) (state officials and legislators denied ballot access if they have served in same office for 8 or more of previous 15 years).

**Indiana:** Indiana Constitution Article V, § 1 (1851 & Supp. 1994) (governor may not serve more than eight years in any period of 12 years); Article VI, § 1 (same for secretary of state, state auditor, state treasurer).

**Kansas:** Kansas Constitution Article I, § 1 (1859 & Supp. 1993) (no more than two successive terms as governor or lieutenant governor).

**Kentucky:** Kentucky Constitution § 71 (1891 & Supp. 1992) (governor ineligible for succeeding four years after expiration of current term); § 82 (same for lieutenant governor); § 93 (same for treasurer, auditor of public accounts, secretary of state, commissioner of agriculture, labor, and statistics, attorney general, superintendent of public instruction, and register of the land).

**Louisiana:** Louisiana Constitution Article 4, § 3(B) (1974 & Supp. 1994) (governor cannot serve term following two successive terms).

**Maine:** Maine Constitution Article V, § 3 (1983 & Supp. 1993) (governor cannot serve term following two consecutive terms); 21-A M.R.S.A. § 553 (limits consecutive number of terms for state senators, representatives, the secretary of state, state treasurer, attorney general and state auditor). Term limits upheld in *League of Women Voters v. Diamond*, 923 F. Supp. 266 (D. Me.), *aff'd per curiam*, 82 F.3d 546 (1st Cir. 1996); *League of Women Voters v. Secretary of State*, 683 A.2d 769 (Me. 1996).

**Maryland:** Maryland Constitution Article II, § 1 (1867 & Supp. 1993) (governor cannot serve term following two consecutive terms).

**Michigan:** Michigan Constitution Article V, § 30 (1963 & Supp. 1994) (no person shall be elected more than twice to offices of governor lieutenant governor, secretary of state, or attorney general); Article IV, § 54 (state representatives may not serve more than three times; state senators may not serve more than twice).

**Mississippi:** Mississippi Constitution Article V, § 116 (1890 & Supp. 1993) (governor cannot be his or her own immediate successor); Article V, § 128 (same for lieutenant governor).

**Missouri:** Missouri Constitution Article IV, § 17 (1945 & Supp. 1994) (no person shall be governor or treasurer twice); Article III, § 8 (no one shall be elected or appointed to serve more than eight years total in any one house of the General Assembly, nor more than 16 years total in both houses of the General Assembly).

**Montana:** Montana Constitution Article IV, § 8(b), (c) (1889 & Supp. 1994) (governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state legislators limited to eight years in any 16 year period).

**Nebraska:** Nebraska Constitution Article IV, § 1 (governor inelligible to run for four years after serving two consecutive terms); Article IV, § 3 (treasurer inelligible to run for two years after serving two consecutive terms).

**Nevada:** Nevada Constitution Article V, § 3 (1864 & Supp. 1993) (no person can be elected governor more than twice); Article 5, § 19 (secretary of state, treasurer, controller, attorney general); Article IV, §§ 3, 4 (state legislators may serve no

more than 12 years in same office); Article VI, § 11 (state judges limited to single six year term). Judicial term limits upheld in *Nevada Judges Association v. Lau*, 112 Nev. 51, 910 P.2d 898 (Nev. 1996).

**New Jersey:** New Jersey Constitution Article V, § 1, ¶ 5 (1947 & Supp. 1994) (governor must let term intervene after serving two consecutive terms).

**New Mexico:** New Mexico Constitution Article V, § 1 (1911 & Supp. 1994) (governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and commission of public lands who have served two consecutive terms cannot serve again until one full term has intervened); *see also* Article X, § 2 (same term limits for county officials).

**North Carolina:** North Carolina Constitution Article III, § 2(2) (1970 & Supp. 1993) (neither governor nor lieutenant governor can serve more than two consecutive terms of same office).

**North Dakota:** Constitution Article V, § 12 (treasurer limited to two consecutive terms).

**Ohio:** Ohio Constitution Article III, § 2 (1851 & Supp. 1993) (governor, lieutenant governor, secretary of state, treasurer, attorney general, and auditor limited to two successive terms); Article II, § 2 (state senators limited to two consecutive terms; state representatives limited to four consecutive terms).

**Oklahoma:** Oklahoma Constitution Article VI, § 4 (governor limited to two successive terms); Article V, § 17A (state legislators may serve no more than 12 years).

**Oregon:** Oregon Constitution Article V, § 1 (governor limited to eight years in twelve year period); Article II, § 19 (members of state legislature limited to a total of 12 years; state senators

and statewide officers limited to 8 years; members of state house of representatives limited to six years).

**Pennsylvania:** Pennsylvania Constitution Article IV, § 3 (1874 & Supp. 1994) (governor eligible to succeed himself or herself for only one additional term); Article IV, § 4 (same for lieutenant governor); Article IV, § 4.1 (attorney general limited to two successive terms); Article IV, § 18 (same for auditor general and treasurer).

**Rhode Island:** Rhode Island Constitution Article IV, § 1 (1986 & Supp. 1993) (governor, lieutenant governor, secretary of state, attorney general, and treasurer cannot serve consecutively in same office for more than two full terms).

**South Carolina:** South Carolina Constitution Article IV, § 3 (1895 & Supp. 1993) (governor cannot serve more than two consecutive terms).

**South Dakota:** South Dakota Constitution Article IV, § 2 (1889 & Supp. 1994) (governor and lieutenant governor limited to two consecutive terms); Article IV, § 7 (same for attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands); Article III, § 6 (no person may serve more than four consecutive terms or a total of eight consecutive terms in the state senate or state house of representatives).

**Tennessee:** Tennessee Constitution Article III, § 4 (1870 & Supp. 1993) (governor can serve no more than two consecutive terms).

**Utah:** Utah Elections Code § 20A-10-201(1) (governor, lieutenant governor, attorney general, auditor, and treasurer limited to 12 consecutive years in office); Utah Elec. Code

§ 20A-10-201(2)(3) (same for state representatives and senators).

**Virginia:** Virginia Constitution Article V, § 1 (1971 & Supp. 1994) (governor cannot serve consecutive terms).

**Washington:** Washington Revenue Code Ann., § 43.01.015 (1984 & Supp. 1994) (governor and lieutenant governor may not have their names printed on the ballot if they have served in same office for eight of previous 14 years); § 44.04.015 (house of representatives members may not have their names printed on the ballot if they have served during six of previous 12 years; state senators may not have their names printed on the ballot if they have served during eight of previous 14 years; no candidate for state legislature may have their name printed on the ballot if they have served for 14 of previous 20 years). Term limits currently under legal challenge in an original writ proceeding in the Washington Supreme Court in *Gerberding v. Munro*, docket no. 65059-4.

**West Virginia:** West Virginia Constitution Article VII, § 1 (1872 & Supp. 1994) (governor cannot serve more than two consecutive terms). Term limits upheld in *State ex rel. Maloney v. McCartney*, 223 S.E.2d 607 (W. Va. 1976), *appeal dismissed for want of substantial federal question sub nom. Moore v. McCartney*, 425 U.S. 946 (1976).

**Wyoming:** Wyo. Stat. Ann. § 22-5-103 (1977 & Supp. 1993) (candidate may not be elected or serve in same office if served eight or more years in any 16 years in offices of governor, secretary of state, state auditor, state treasurer, and state superintendent of public instruction; if served six years in any 12 year period as state representative; if served 12 years in any 24 year period as state senator).